J.B. JEYARETNAM v. LEE KUAN YEW

[Privy Council (Lord Wilberforce, Lord Emund-Davies, Lord Russell of Killowen, Lord Keith of Kinkel & Sir George Baker) January 11-13 & February 24, 1982]

[Privy Council Appeal No. 4 of 1980]

Libel and Slander — Election speech — Whether words capable of conveying a defamatory meaning — Plea of fair comment and qualified privilege — Imputations of fact — Express malice — Damages — Practice not to interfere with concurrent findings of fact.

Tort — Defamation — Election speech — References to respondent and his family.

This was an appeal from the decision of the Court of Appeal of Singapore reported in [1979] 2 M.L.J. 282. The respondent had brought an action against the appellant for slander arising out of remarks made by the appellant in an election speech. The learned trial judge held that the words complained of bore the meaning that the respondent had procured the grant of favours to Messrs. Lee and Lee of which his wife was the senior partner and to his family and that the respondent had been guilty of nepotism and corruption and that the words were defamatory of the respondent. The learned trial judge rejected the pleas of fair comment and qualified privilege and gave judgment to the respondent in the sum of $130,000 damages. The appeal of the appellant to the Court of Appeal was dismissed. The Court of Appeal held that the contention of the appellant that that the words were not capable of carrying a defamatory meaning was an utterly unreasonable interpretation of the words. In the Court of Appeal the appellant did not pursue his appeal from the dismissal by the trial judge of the plea of fair comment on the ground that the imputations in the case were undoubtedly imputations of fact. Both the trial court and the Court of Appeal also held that the words were published by the appellant recklessly being indifferent to their truth or falsity and that the appellant was actuated by express malice. The appellant appealed to the Privy Council.

Held: (1) there was a concurrent finding in the lower courts in this case that the words used by the appellant were capable of carrying a defamatory meaning and the appellant no longer appealed on this issue of defamation;

(2) in the Court of Appeal the appellant had also not pursued his appeal from the dismissal by the trial court of the plea of fair comment on the ground that the imputations were imputations of fact and therefore the only subsisting defence to be considered was whether the appellant spoke in proper self-defence to the criticisms levelled against him;

(3) in this case there were concurrent findings in the lower courts that the appellant had exceeded the bounds of legitimate defence and therefore even if the occasion was potentially privileged the privilege had been destroyed by so grave an abuse by the appellant of his right to reply in terms reasonable proportionate to the attack made upon him;

(4) there was ample evidence in this case to support the concurrent findings of the appellant's express malice in publishing the slander complained of. Therefore the plea of qualified privilege was not available to the appellant;

(5) in regard to the award of damages, it is the settled practice of the Board not to interfere with a concurrent finding of fact arrived at by both the lower courts unless it has been demonstrated that there has been some miscarriage of justice or violation of some principle of law or procedure;

(6) this reluctance to interfere is particularly called for where concurrent findings are dependent upon local conditions with which local judges are inevitably more familiar than members of the Board of the Privy Council can ever hope to be;

(7) the assessment of damages in the present case is peculiarly dependent on local conditions and local tariffs and neither in that respect nor in relation to the issue of liability has the appellant demonstrated that any error of law underlay the conclusions arrived at in the lower courts.

Cases referred to:-

(1) *Turner* v. *Metro-Goldwyn-Mayer Pictures Ltd.* [1950] 1 All E.R. 449, 470.

(2) *Horrocks* v. *Lowe* [1975] A.C. 135, 149-151.

(3) *Broome* v. *Cassell & Co. Ltd.* [1972] A.C. 1027, 1071.

(4) *Srimati Bibhabati Devi* v. *Kumar Ramendra Narayan Roy* [1946] A.C. 508, 521.

PRIVY COUNCIL APPEAL FROM SINGAPORE.

Richard Hartley Q.C. (*David Eady* with him) for the appellant.

Robert Alexander Q.C. (*John Previte* and *J. Grimberg* with him) for the respondent.

Cur. Adv. Vult.

Lord Edmund-Davies (delivering the judgment of the Board): The defendant appeals with leave from a decision of the Court of Appeal in Singapore dismissing his appeal against the decision of Chua J., who awarded the plaintiff $130,000 (the equivalent of £29,600 sterling) as damages for slander.

At all material times the plaintiff (an advocate by profession) was Prime Minister of Singapore and Secretary-General of the People's Action Party, the party in government. The defendant is also an advocate and solicitor of wide experience and at all material times he was the Secretary-General of the Workers' Party, a political party which contested the Parliamentary General Election held in Singapore on December 23, 1976. Both plaintiff and defendant were candidates at that election.

In 1955 the plaintiff had formed the law partnership of 'Lee & Lee' with his wife and his brother, Mr. Lee Kim Yew, and he continued in that partnership until he became Prime Minister for the first time in 1959. He then ceased to be a partner, his name was removed from the firm's notepaper and thereafter he had no association with its activities, though his wife and his brother continued in practice under the style of 'Lee & Lee'. The defendant and his wife were members of a firm of lawyers practising under the name of 'J.B. Jeyaretnam and Company'.

At a press conference held on nomination day (December 13, 1976) the plaintiff criticised the defendant and other members of his party for the policies they were advocating, and in particular said of them "... none of those who proposed to give things away, either by their management of their own parties or even of their own personal fortunes, had shown they could accumulate anything". The defendant said in evidence that these words insulted him and made him very angry.

At an election rally held on December 18, at which some 1,500 people were present, the defendant delivered a speech in the course of which he said:

"I'm not very good in the management of my own personal fortune but Mr. Lee Kuan Yew has managed his personal fortunes very well. He is the Prime Minister of Singapore. His wife is the senior partner of Lee and Lee and his brother is the director of several companies, including Tat Lee Bank in Market Street; the bank which was given a permit with alacrity, a banking permit licence when other banks were having difficulty getting their licence. So Mr. Lee Kuan Yew is very adept at managing his own personal fortunes but I am not. I am a fool for your sake. And I tell you this, my dear friends, that if I should become Prime Minister of Singapore, I'm not saying I will, Mr. Lee Kuan Yew keeps talking as though he is going to remain for the next twenty years. I know it's left to the people; the people decide who will

form the government and then the people in Parliament decide who will be the Prime Minister. All I'm saying is, if I become Prime Minister there will be no firm of J. B. Jeyaretnam and Company in Singapore because I wouldn't know how to manage my own personal fortunes."

In the General Election held on December 23 the People's Action Party won all 69 seats and the number of electors voting for them was higher than at the preceding election held four years earlier.

On January 8, 1977, the plaintiff's solicitors wrote to the defendant, complaining that the aforesaid words used by him on December 18 were understood to mean that the plaintiff was wanting in honesty and integrity as a Prime Minister. In the reply thereto it was denied that the defendant's words had the defamatory meaning alleged, and the defendant indicated his willingness to acknowledge that he had intended to convey no such meaning.

An action for slander was instituted a few days later, the statement of claim alleging of the aforementioned words that "in their natural and ordinary meaning [they] meant and were understood to mean that the plaintiff had procured preferential treatment for his brother and/or wife to his own and/or their personal financial advantage, had thereby abused and would continue to abuse the office of Prime Minister of Singapore, is wanting in honesty and integrity, and is unfit to hold the said office. The said words were calculated to disparage the plaintiff in his aforesaid office. In the premises, the plaintiff has been injured in his character, credit and reputation as Prime Minister".

By his amended defence, the defendant denied that his words were capable of bearing such a meaning or any defamatory meaning. He further alleged that when he made his speech on December 18 the occasion was one of qualified privilege, he was then merely replying to an attack on his financial capacity and reputation made by the plaintiff at the press conference on December 13. It was further pleaded that the defendant had been "... under a public, moral or social duty as a candidate in the 1976 Parliamentary Elections to communicate the said words to the electors who had an interest to receive the said communication", but this alternative ground was never pursued and was later expressly disclaimed.

In the further alternative, the defendant pleaded that the words complained of were fair comment upon a matter of public interest, "namely the comparative financial abilities of the plaintiff and [the defendant] ...." By his reply the plaintiff put in issue the pleas of qualified privilege and fair comment, and alleged (with particulars) that the defendant had been actuated by express malice. Before trial the defendant administered interrogatories of such a nature that, in the submission of the plaintiff, they were calculated to exacerbate the injury caused to his feelings by the defendant's defamatory words.

The action came on for trial in November 1978 before Chua J., who had ample opportunity of judging the credibility of the defendant during the three days over which his evidence was spread. He denied that he had defamed the plaintiff. But he accepted that, if his words were indeed reasonably capable of being understood as alleging corruption or nepotism on the plaintiff's part, such an allegation would be "outrageous" and "a wicked lie", for before ever he made his election speech he knew that the plaintiff had nothing to do with the granting of banking licences. He claimed that he had intended no more than to answer the attack of financial incompetence launched against him by the plaintiff, and that he honestly thought he had done so without casting any aspersions on the plaintiff's established reputation for honesty in his public life.

A reserved judgment was delivered on January 9, 1979. On the issue of defamation *vel non*, after a lengthy review of the evidence the learned judge observed:

"The defendant is saying that the plaintiff's wife and brother are the means by which the plaintiff has managed his personal fortune. The suggestion that the Tat Lee Bank was given a banking licence with alacrity when other banks were having difficulties getting their licences is a very clear suggestion that the plaintiff's brother's bank was shown favour. The defendant was therefore suggesting that one of the ways in which the plaintiff manages his personal fortune well was by dispensing deliberate favours to his brother.... The defendant is clearly saying that the plaintiff is adept in managing his own fortune because he used corrupt methods.... There can be no doubt that the words bear the meaning that the plaintiff had procured the grant of favours to Lee & Lee and to his family. To put it in blunt terms, the words mean that the plaintiff had been guilty of nepotism and corruption, and this would mean that the plaintiff is unfit to be Prime Minister."

This conclusion as to the clear defamatory import of the defendant's words was upheld in the Court of Appeal, whose unanimous judgment put the matter in the following way: —

"[Counsel for the defendant] contends that... the natural and ordinary meaning of the words relates to the accumulation of wealth, not by corrupt means at all but by legitimate and legal means which nevertheless the speaker deprecated, and thus the words complained of are not capable of carrying a defamatory meaning.... Such an interpretation would, in our opinion, be an utterly unreasonable interpretation of the words."

Before this Board the defendant no longer appeals on this issue of defamation, but that is not to say that the emphatic rejection by both courts of the case so strenuously (and mistakenly) advanced on his behalf has no bearing on the outcome of this appeal, and particularly in relation to the issue of damages which must later be considered.

In the Court of Appeal the defendant did not pursue his appeal from the dismissal by the trial judge of the plea of fair comment on the ground that "the imputations in the present case are undoubtedly imputations of fact". The Board therefore turns to consider the only subsisting defence in relation to the issue of liability. It is well established law that a person whose character or conduct has been attacked is entitled to answer back, and any defamatory statements made in doing so will not be actionable at the suit of his attacker *provided* they are published *bona fide* and are fairly relevant to the attack made upon him; see *Gatley* on Libel and Slander (8th Edition), para. 514, and the cases there cited. In *Turner* v. *Metro-Goldwyn-Mayer Pictures Ltd.*[1] Lord Oaksey said (at page 470H):

"There is, it seems to me, an analogy between the criminal

law of self-defence and a man's right to defend himself against written or verbal attacks. In both cases he is entitled, if he can, to defend himself effectively, and he only loses the protection of the law if he goes beyond defence and proceeds to offence. That is to say, the circumstances in which he defends himself, either by acts or by words, negative the malice which the law draws from violent acts or defamatory words.... The law does not concern itself with niceties in such matters. If you are attacked by a prize fighter, you are not bound to adhere to the Queensberry rules in your defence."

Then can it properly be said that the defendant spoke at the election rally merely in proper self-defence to the criticisms levelled against him and his political colleagues by the plaintiff at the press conference which, on his own evidence, had angered him? In other words, can criticism on the ground of personal or political incompetence properly be answered by charges of corruption and nepotism? As to this, Chua J., said:

"The charge of nepotism and corruption against the plaintiff was in no sense a defence by defendant against a charge of incompetence. The defendant made an unwarranted and unjustifiable attack on the plaintiff's honesty and integrity."

And the Court of Appeal in its turn observed:

"An accusation of corruption and nepotism is clearly unrelated to a criticism of incompetence in financial affairs and can in no sense amount to a defence against such a criticism, however strong that may be. On the contrary, it amounts to a counter-attack which exceeds the bounds of legitimate defence."

With those concurrent findings of fact this Board is in respectful and complete agreement. In the result, it matters not whether one holds that, the defendant having decided *à l'outrance* to launch a grossly excessive attack on the plaintiff's integrity, the occasion was never privileged at all, or whether one says that the occasion itself was potentially privileged, but that the privilege was destroyed by so grave an abuse by the defendant of his right to reply in terms reasonable proportionate to the attack made upon him. Whichever view one adopts, the conclusion must be that no plea of qualified privilege was available to the defendant.

It is sufficient to deal briefly with the argument advanced by defendant's counsel that, in view of the defendant's insistence (a) that he had never intended to defame the plaintiff, and (b) that he throughout honestly believed that his words could not be understood to defame, a plea of qualified privilege is still open to him, and this notwithstanding concurrent findings that the plaintiff had in fact been defamed. In such circumstances, so ran counsel's submission, it was incumbent upon the plaintiff to prove that the defendant had been actuated by express malice, that no such proof had been forthcoming, and that the defendant ought therefore to have been exonerated.

For reasons which this Board was unable to follow, defendant's counsel cited in support of his submission the speech of Lord Diplock in *Horrocks* v. *Lowe*[2] and particularly the portion thereof at pages 149-151 beginning, "So the *motive* with which the defendant on a privileged occasion made a statement defamatory of the plaintiff becomes crucial" (emphasis added). Notwithstanding what later appears in that passage, counsel reiterated that the honest belief (asserted by the defendant) that nothing he said in replying to the plaintiff's criticisms could be regarded as defamatory of him served to preserve the privileged nature of the occasion.

Such a submission ignores the evidence in the case and the findings of both courts. For if one thing is perfectly clear in the frequently complex law of defamation it is that no defence of qualified privilege or fair comment is available to a defendant who has knowingly and falsely defamed another. Honesty is the indispensable basis of such defences, and the *ratio decidendi* of *Horrocks* v. *Lowe* (*ante*) was simply that the trial judge's finding that the defendant honestly believed he was speaking the truth could not be reconciled with another finding that he was nevertheless actuated by express malice. But in the present case the defendant never asserted his belief that the plaintiff had indeed been corrupt. Indeed, he expressed his complete confidence in the plaintiff's integrity. Chua J.'s finding of fact on the matter was that:

"The defendant made the publication recklessly, being indifferent to the truth of what he published, and neither considering nor caring whether it was true or not, and he should be treated as if he knew it to be false. In speaking and publishing those words the defendant was actuated by express malice."

And later, when dealing with the matter of damages, the learned judge added:

"He has, in an attempt to avoid responsibility, pretended that the words do not bear the meaning put on them by the plaintiff when in truth he must know that his words bore this meaning, and he intended them to do so."

The Court of Appeal in its turn said:

"It was a grave slander perpetrated deliberately, and not only without regard to the truth but knowing that it was untrue. It was perpetrated for political gain, not caring what distress it would cause and what harm it would inflict on the personal and political reputation of an incumbent Prime Minister."

In the judgment of their Lordships' Board, there was ample evidence to support such concurrent findings of the defendant's express malice in publishing the slander complained of.

Something must finally be said about the judge's award of damages, which was again upheld by the Court of Appeal. Plaintiff's counsel had said in opening the case that, while the damages ought to be large, punitive damages were not being asked for and only fair compensation was sought. For the defendant it was urged before their Lordships' Board that damages not exceeding one-third of the sum actually awarded would have been adequate compensation to the plaintiff, whose election chances had been wholly unaffected by anything the defendant said, as his triumph in the election itself demonstrated. And complaint was made that the trial judge wrongly adverted to the absence of an unqualified apology, the administration of interrogatories, and the like in support of the view he expressed that the defendant "sought to aggravate the injury at every turn". But, in the judgment of the Board, it has not been demonstrated that he improperly took into consideration any irrelevant matters or failed to have regard to any mitigating factors.

The task of assessing damages is one to be approached broadly, and, "Quite obviously the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the

absence of apology . . . or the malice of the defendant" (*Broome* v. *Cassell & Co. Ltd.*,[3] *per* Lord Hailsham L.C. at page 1071E). The learned judge described his award as "fair compensation for this very serious slander", and the Court of Appeal considered that the defendant had published "a very grave slander which struck at the heart of the Prime Minister's political reputation". The appellant is thus again confronted by a concurrent finding of fact arrived at by both lower courts. In such circumstances the settled practice of the Board is not to interfere unless it has been demonstrated that there has been "some miscarriage of justice or violation of some principle of law or procedure" (*Srimati Bibhabati Devi* v. *Kumar Ramendra Narayan Roy*,[4] *per* Lord Thankerton at page 521). And reluctance to interfere is particularly called for where concurrent findings are dependent upon local conditions with which local judges are inevitably more familiar than members of their Lordships' Board can ever hope to be. The assessment of damages in the present case is peculiarly dependent on local conditions and local tariffs, and neither in that respect nor in relation to the issue of liability has the appellant demonstrated that any error of law underlay the conclusions arrived at in the lower courts.

Their Lordships will therefore dismiss the appeal. The appellant must pay the respondent's costs.

Appeal dismissed.

Solicitors: *Ward Bowie; Herbert Smith & Co.*

SINGAPORE REPORTS

RE B. & W. INDUSTRIAL & SUPPLIERS; EX PARTE DAISY PAPER CUPS & WOODEN STICKS CO.

[O.C.J. (Sinnathuray J.) January 29, 1982]

[Singapore — In Bankruptcy No. 325 of 1981]

Bankruptcy — Petition by substituted service — Application for Receiving and Adjudication Order against partner of firm — Whether petition by substituted service on firm is service against partner.

The bankruptcy petition was lodged against the firm, B & W Industrial & Suppliers. The petition was served by way of substituted service on the firm by an advertisement. The applicants sought for a Receiving and Adjudication Order against a partner of the firm. They contended that because the bankruptcy notice had been served on the partner, the petition served by way of substituted service on the firm was a service against the particular partner.

Held: injustice may be caused to the partner who had not been served with the petition. The application for a Receiving and Adjudication Order against the partner must therefore be dismissed.

BANKRUPTCY PETITION.

Khoo Guan Chuan for the Petitioning Creditors.

Zainol Abeedin bin Hussein for the Official Assignee.

Sinnathuray J. (delivering oral judgment): The bankruptcy petition is against the firm, B & W Industrial & Suppliers. The petition was served by way of substituted service on the firm by an advertisement.

The application made on behalf of the petitioning creditors this morning is that a Receiving and Adjudication Order be made against a partner of the firm. The submission is that because the bankruptcy notice had been served on the partner, the petition served by way of substituted service on the firm is a service against the particular partner and that I should make a Receiving and Adjudication Order against that partner. I cannot accede to that submission. There is no authority to support it. Mr. Zainol Abeedin for the Official Assignee opposes the application. He submits that an injustice may be caused to that partner who has not been served with the petition. I agree with him. The application for a Receiving and Adjudication Order against the partner is dismissed.

Application dismissed.

Solicitors: *Chua, Hay & Wee.*

ONG BOON POK REALTY CO. (PTE.) LTD. v. CHIANG HONG (PTE.) LTD.

[O.C.J. (Sinnathuray J.) January 29, 1982]

[Singapore — Civil Suit No. 2631]

Land Law — Sale and purchase agreement — New law restricting sale of property to citizens — Non-citizens to obtain government approval — Effect on agreement — Whether contract could be rescinded.

Contract — Real property — Sale and purchase agreement — New law restricting sale of property to citizens — Non-citizens to obtain government approval — Effect on agreement — Whether contract could be rescinded.